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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,340	11/16/2000	William N. Weaver	ITW-12833	6496

7590 05/27/2004

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EXAMINER	
TRAN, LOUIS B	

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/714,340	WEAVER ET AL .	
	Examiner	Art Unit	
	Louis B Tran	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 January 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment, received on 01/14/2004.

Applicant's cancellation of claims 1-23 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 24, 31, and 38 are rejected under 35 U.S.C. 103(a) as being obvious over Cervantes et al. (6,170,225).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer

in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

With respect to claims 24, 31, and 38, Cervantes et al. teaches the method of providing containers with a first diameter to an applicating machine including a drum 11 with a plurality of jaws 15, moving a first carrier through the applicating machine, positioning said first carrier over the containers, adjusting a transverse distance between jaws, providing containers having a second diameter and moving a second carrier through the applicating machine and positioning the second carrier over the second diameters of the containers as described in column 8, line 57-column 9, line 20.

Cervantes et al. does not specify the second diameter is less than 10% of the first diameter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a second diameter that is 10% less than the first diameter, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

Cervantes et al. inherently teaches a first diameter with a specific first length and a second diameter with a specific container pitch smaller than said first length dependant on the characteristics of the carrier.

4. Claims 24, 26-39 are rejected under 35 U.S.C. 103(a) as being obvious over Krogman et al. (5,383,321) in view of Odum et al. (6,055,791).

Krogman et al. discloses the invention substantially as claimed including the method of providing containers with a first diameter (outer wall diameter) to an applicating machine including a drum 40 with a plurality of jaws 52,54, moving a first carrier 12 through the applicating machine, positioning said first carrier over the containers 14, adjusting a transverse distance between jaws (as described in Abstract), providing containers having a second diameter (rim diameter).

Krogman et al. does not explicitly teach moving a second carrier through the applicating machine and positioning the second carrier over the second diameters of the containers.

However, Odum et al. discloses the well known use of providing second carrier webs for varying container sizes, as in column 1, lines 55-60, for the purpose of efficiency in handling various product as in column 1, line 33.

Therefore it would have been obvious to one having ordinary skill in the art to provide Krogman et al. with a second carrier to apply to a second diameter in order to achieve greater flexibility and efficiency.

Krogman et al. does not specify the second diameter is less than 10% of the first diameter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a second diameter that is 10% less than the first diameter, since it has been held that discovering an optimum value of a result effective

variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

Krogman et al. inherently teaches a first diameter with a specific first length and a second diameter with a specific container pitch smaller than said first length dependant on the characteristics of the carrier (as in claim 31).

With respect to claims 29 and 36, the modified method of Krogman et al. would inherently provide a reduced overall length of a second package.

With respect to claims 26-28, 33-35, Krogman et al. discloses the claimed invention except for specific first and second diameters. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select optimum first and second diameters, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

With respect to claims 30, 37 and 39, Krogman et al. shows adjusting jaw pairs while maintaining a pitch length as described in claim 1 of Krogman et al.

With respect to claim 32, Krogman et al. shows a plurality of relief holes between adjacent longitudinal rows of elongated apertures in the carrier as seen in Figure 3.

5. Claim 25 is rejected under 35 U.S.C. 103(a) as being obvious over Krogman et al. (5,383,321) in view of Odum et al. (6,055,791) in further view of Fisher (3,044,230).

With respect to claim 25, the modified method of Krogman discloses the invention substantially as claimed but does not show elongated apertures in said

second carrier in an unstressed condition prior to application to the plurality of containers being approximately 4-6 times longer than wide.

However, Fisher teaches a length in a carrier being approximately four to six times longer than the width as seen in Figure 1 and 2 for the purpose of forming a tenacious grip on the containers as indicated in column 2, line 67.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Krogman et al. with a second carrier of the type in Fisher in order to create a tenacious grip withstanding regular wear.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's remarks have been fully considered but deemed moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lbt

JOHN SIPOS
PRIMARY EXAMINER